

March 5, 1993

LB 455, 767

CLEPK: 25 ayes, 0 nays, Madam President, on the advancement of LB 767.

SENATOR CROSBY: LB 767 advances. Before we go on to the next bill, I would just like quickly for the Legislature to recognize our Sergeant at Arms, Karl Kamprath, who has his 83rd birthday today. Congratulations, Karl, and may we all be in as good a shape as you are when we're 83. Thank you. We will proceed to LB 455, introduced by Senator Chambers. Mr. Clerk.

CLERK: LB 455, Madam President, introduced by Senator Chambers. (Read title.) The bill was introduced on January 19, referred to Judiciary, advanced to General File. I have no amendments to the bill.

SENATOR CROSBY: Senator Chambers.

SENATOR CHAMBERS: Madam President and members of the Legislature, this is a bill that does a very simple thing. It establishes the level of proof that's necessary to convict an inmate in a disciplinary hearing at the penitentiary. Prior to the insertion of this language into the law, there was a federal decision that said the only thing needed to convict an inmate in one of these hearings is some evidence and Judge Urbom, in writing that memorandum opinion, said that some evidence is in existence if it takes the form of a written accusation against an inmate even if that accusation is knowingly and intentionally false. After that opinion had come down, a year or so later a Lancaster County district judge made the ruling and using language from the Administrative Procedures Act that in order to uphold one of these convictions it's necessary to use a standard of proof called substantial evidence. This is not as high a standard as preponderance but it's higher than prima facie. So all it does is take language from the Administrative Procedures Act with reference to the burden of proof necessary to sustain one of these charges. That burden of proof, in the Administrative Procedures Act, is the same standard that's necessary to sustain a charge against an employee or any person who could bring an appeal under the Administrative Procedures Act. It's a very simply bill. If you have any questions, I will answer them. You will notice that there was no opposition, if you look at the committee statement. An employee from the Department of Corrections had indicated that this is what they would be doing anyway. But by putting it in the statute, it